Northern Natural Gas
A MIDAMERICAN ENERGY HOLDINGS COMPANY

Northern Natural Gas Company
P.O. Box 3330
Omaha, NE 68103-0330
402-398-7200

October 12, 2007

Laura Demman, Esquire
Director and Legal Counsel
Nebraska Public Service Commission
P.O. Box 94927
Lincoln, NE 68509-4927

RE: Nebraska Resources Company, LLC
Docket No. NG-0051/PI-130

Dear Ms. Demman:

Attached herewith for filing with the Commission is the Post Hearing Brief of Northern Natural Gas Company in the above numbered docket.

Thank you.

Sincerely,

Penny Tvrdik
Senior Counsel

Attachment

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, to investigate jurisdictional issues pertaining to construction and operation of a natural gas pipeline within the state of Nebraska by Nebraska Resources Company, LLC, or any other entity.	)))))))	Docket No. NG-0051/PI-130

POST-HEARING BRIEF OF
NORTHERN NATURALGAS COMPANY

Northern Natural Gas Company (Northern) hereby submits this post-hearing brief in response to the investigation initiated by the Nebraska Public Service Commission (Commission) on July 24, 2007, in this docket.

BACKGROUND AND ISSUES UNDER INVESTIGATION

The Commission issued an order (Order) in this docket on July 24, 2007, initiating an investigation into certain issues related to regulation of the construction and operation of a natural gas pipeline located wholly within the state of Nebraska. These issues are as follows:

1. Does the definition of "high volume ratepayer" in Neb. Rev. Stat. Sec. 66-1802(7) include LDCs with volumetric demand in excess of 500 therms per day?

2. Does Nebraska's double-piping prohibition under Neb. Rev. Stat. Sec. 66-1852 apply to a pipeline providing a new interconnection to an LDC?

3. Does the Commission have jurisdiction over an Application under Neb. Rev. Stat. Sec. 66-1853(1) for a Certificate of Public Convenience to operate as a "jurisdictional utility" a pipeline located wholly within the state of Nebraska to deliver natural gas to LDCs and other customers?

4. What other regulatory authorities, including state, federal and local governing bodies of any kind, would have jurisdiction over the proposed NRC Pipeline, and what is the scope of their review?

Since NRC requested that this investigation be initiated, Northern generally will refer to NRC in these comments, with the understanding that such comments would apply uniformly to any other similarly-situated intrastate pipeline.

NRC has submitted an extensive description of a contemplated project in this docket. NRC has described its route, its customers, its existing and future contracts, its financial ability and many other aspects of its theoretical project. As the hearing officer has already determined, "No order in this docket will address the merits of any future pipeline project or application which may be filed with the Commission."[1] The determination of whether a given pipeline project meets the statutory standard of public convenience must be reserved for a later proceeding. The facts set forth in this docket cannot and should not be relied upon for any decision rendered. If any facts must be assumed, the Commission should verify those facts in a subsequent docket. The Commission must base its decisions in this docket on its statutory authority, without regard for the specifics or merits of a given project. Northern will refer to many of the facts submitted in the docket as a way to emphasize the need for fact-finding in a subsequent docket.

The crux of NRC's comments and much of the discussion at the September 25th hearing focused on the value a Tulsa company will bring to smaller Nebraska communities that want to attract industry, particularly ethanol plants. Interstate pipelines have been unfairly maligned in this docket. Senator Flood stated at the hearing, "We are wholly dependent on a company regulated by the Federal Government with little hope of seeing any progress." (Transcript P86 LL8-11.) In reality, Northern and other interstate pipelines actively work with existing and prospective customers to meet their gas

[1] *See also*, Transcript of September 25 Proceedings, Volume 1 (Transcript) P8, LL14-19.

requirements. Northern, a company headquartered in Omaha, Nebraska for over 77 years, currently serves three corn processing plants in Nebraska, two of which are under expansion. In any event, according to NRC, it also plans to be an interstate pipeline with respect to its service to industrial customers. Therefore, this project will also be "dependent on a company regulated by the Federal Government."

The allegations made in this docket that soybean processor did not locate in Norfolk because an interstate pipeline expected to receive payment or sufficient credit backing for its service are completely speculative and irrelevant to the issues in this docket. Since NRC clearly states that its plans are to have the Federal Energy Regulatory Commission (FERC) regulate NRC's service to end users,[2] it is fair to assume that NRC's credit policies for service to end users will be those used by other interstate pipelines, *i.e.*, those prescribed by the FERC. The true motives and circumstances of the soybean processor are unknown. The route described by NRC does not even include Norfolk.[3] Whether NRC would have made similar demands is unknown. In fact, NRC has clearly indicated that it will *not* build speculative pipe without contractual assurances from customers.[4] If it were willing to do so, Norfolk would already be part of the described route.

The outcome of this proceeding will have long-term ramifications on the entire natural gas industry. As a major service provider in the industry, Northern does not want to see an outcome that reflects negatively on the industry. Therefore, the Commission should carefully evaluate the extent of its authority to regulate the rates, services and facilities of an intrastate pipeline located entirely within the state, and determine how that

[2] Transcript PP30-32 and 56-58.
[3] See Exhibit A to NRC Comments.
[4] Transcript P17 LL5-9.

authority should be exercised, based on the governing statute and the facts, not unfounded allegations.

SUMMARY OF ARGUMENT

Rather than repeat its Comments filed in this docket on September 7, 2007, Northern hereby incorporates those Comments by reference. In this brief, Northern expands upon several of the sub-issues involved in this docket. First, as evidenced by the existence of this docket and the wide diversity of comments presented herein, it does not appear that the Commission's authority, if any, over the type of pipeline project described herein satisfies the Hinshaw exemption. Moreover, the particular project described by NRC does not appear to be subject to Nebraska Commission jurisdiction at all. If the Commission determines that state regulation is appropriate, it must undertake to fully regulate the rates, services and facilities of any pipeline it certificates, in order to satisfy the Hinshaw test and exempt the pipeline from FERC jurisdiction. See 15 U.S.C. § 717(c). Meeting the requirements both of the Hinshaw exemption and Nebraska's "public convenience" standard will require a thorough evaluation of any proposed project and ongoing, effective regulation of that project. Although no specific project has been proposed or is at issue in this docket, NRC has submitted significant information describing a contemplated project. Based on the information NRC has provided, it does not appear that NRC will qualify as a Hinshaw pipeline. NRC states it has already entered into a negotiated rate contract with Aquila, the only LDC to be served from the contemplated project.[5] Therefore, in reality, the Commission will not be regulating the rates of the new pipeline. The Commission should be wary of acting in a hasty manner

[5] Transcript P57 L22 – P59 L2.

because NRC appears to be "bobbing and weaving" its way through federal and state regulations in order to avoid any meaningful regulation altogether.

Second, the "public convenience" standard set forth in Nebraska's statutes includes not only environmental compliance and landowner impact, but other criteria as well, all of which must be set forth in regulations. One of the criteria that should be set forth in regulations is Nebraska's policy against double piping. Comprehensive regulations will provide clarity and ensure ongoing regulation of a pipeline after an application has been approved, and will thereby ensure the requirements of the Hinshaw exemption are met.

ARGUMENT

I. Without comprehensive regulation, an intrastate pipeline will not qualify for the Hinshaw exemption.

NRC has explained in some detail how it expects to seek a limited jurisdiction certificate, a blanket certificate and approved rates for its service to high volume ratepayers from the FERC. *See, e.g.*, Transcript PP30-32, 56-58. Although it describes a certain rate-setting process for Nebraska, the NRC representative clearly indicated that NRC had already negotiated rates with all of the prospective customers. Transcript P57 L22 – P59 L2. Therefore, it appears that this Commission will not be regulating anything with respect to the project described by NRC and, certainly, the regulation described will not meet the standard set forth in the Hinshaw exemption.

In order to qualify for the Hinshaw exemption, the state must regulate the rates, services and facilities of an intrastate pipeline.[6] There are at least three reasons why it appears the Commission has no authority to regulate the type of pipeline project described by NRC, and, therefore, such a project would not qualify for the Hinshaw exemption. First, as discussed in Northern's Comments,[7] the Commission must clarify the statutes in order to set forth the conditions under which LDCs are or are not high volume ratepayers exempt from regulation under Neb. Rev. Stat. §66-1802(7). Some parties have argued that LDCs could not be high volume ratepayers because, if they were, the statute would then exempt LDCs from any regulation. *See, e.g.*, Transcript P33 LL1-25. However, it is common for an entity to be considered one thing for one purpose and another thing for another purpose. This Commission has in the past distinguished different roles for public utilities and has distinguished situations where it has jurisdiction over a utility and situations where it does not. For example, the Commission has been willing to assume jurisdiction over municipalities for purposes of the double-piping statute, even though the Commission otherwise does not have jurisdiction over municipalities.[8] The Nebraska Supreme Court upheld the Commission's jurisdiction over the Metropolitan Utilities District (MUD) when MUD proposed to act as an aggregator

---

[6] The Hinshaw exemption reads as follows: "The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State Commission. The matters exempted from the provisions of this Act by this subsection are hereby declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction."

[7] See pages 3-8.

[8] Kinder Morgan, Inc., v. City of Hastings, Neb., *Order Denying Motion to Dismiss*, Docket No. FC-1319, entered Aug. 31, 2004.

under Neb. Rev. Stat. §§66-1848 and 66-1849, even though other statutes exempt MUD from the Commission's jurisdiction when MUD acts as a public utility.[9]

Second, NRC has indicated that all its contracts with its customers will be at negotiated rates. The cost-of-service rates that will be submitted will be applicable only to "interruptible transportation service and not for the firm service we anticipate to be provided under negotiated rates."[10] At the same time, NRC argues that LDCs are not high volume ratepayers and that Neb. Rev. Stat. §66-1802(7) is inapplicable to its contemplated service to Aquila. The Hinshaw exemption that NRC claims to be applicable hangs on a single thread: the Nebraska Commission's regulation of the rates, service and facilities[11] of NRC's service to Aquila. As NRC stated in its Comments filed in this docket on September 7, 2007:

> Coming full circle, however, whether the NRC Pipeline qualifies in the first instance as a Hinshaw pipeline turns on whether the Commission has regulatory jurisdiction over the NRC Pipeline's **rates**. Therefore, before considering the scope of the Commission's **certificate jurisdiction**, the scope of the Commission's **rate jurisdiction** must be examined.
>
> Under the SNGRA, the Commission lacks rate jurisdiction over "intrastate" natural gas pipeline service to "high-volume ratepayers" . . . . [T]o the extent that the NRC Pipeline serves high-volume ratepayers, the pipeline would not be classified as a Hinshaw pipeline **with respect to service to such high-volume ratepayers.**[12]

In other words, NRC admits that if the Commission were to determine LDCs to be high volume ratepayers, the contemplated NRC pipeline would not qualify as a Hinshaw pipeline because rates to such customers would be negotiated rather than set by the Commission. NRC concedes that *it has already entered into a negotiated rate*

[9] In re Appl. of Metropolitan Util. Dist. of Omaha v. Neb. Pub. Serv. Comm., 704 N.W.2d 237 (Neb. 2005).
[10] Transcript P58 L25 - P59 L2.
[11] Note the Hinshaw exemption requires state regulation of rates, service and facilities.
[12] NRC September 7 Comments at 7.

contract with Aquila. Under such circumstances, NRC will not be a Hinshaw pipeline because the Nebraska Commission will not exercise meaningful regulation over NRC's rates and terms of service.

The fact that NRC has already negotiated a rate with Aquila shows that, for purposes of this proceeding, Aquila meets the definition of high volume ratepayer and that both NRC and Aquila know that. Aquila obviously does not expect this Commission to set a rate for any potential service from NRC because it has already agreed to a rate, and it would be too risky for Aquila to rely on a Commission-set rate, as the rate could turn out to be higher than Aquila is paying to its current pipeline supplier or higher than the rate to which Aquila has agreed. The State Natural Gas Regulation Act provides that (1) this Commission must set the rates and terms and conditions of service for all customers other than high volume ratepayers,[13] and (2) rates and terms and conditions of service for high volume ratepayers shall be negotiated.[14] If the Commission allows NRC to negotiate a rate with Aquila, the Commission in effect will be determining that Aquila is a high volume ratepayer. Therefore, the rates and service provided by this pipeline would not be subject to state regulation.

Third, NRC is attempting to design a project that will escape as much regulation as possible, in effect "bobbing and weaving" through both federal and state regulations. NRC is proposing that Nebraska set rates for a theoretical "interruptible" service that will be offered to unknown customers, but not for the firm service that will be provided to customers that have signed precedent agreements at negotiated rates. Transcript P58 L22 – P59 L2. Any rates approved by this Commission will not be applicable to any service

[13] Neb. Rev. Stat. §66-1808.
[14] Neb. Rev. Stat. §66-1810.

actually provided, because the rates have already been negotiated with *all* of the prospective customers, including the LDC. Transcript P57 LL20-25. NRC has even gone so far as to say, "[W]e believe transacting business as a jurisdictional utility includes laying that *initial* pipeline at least and proposing service to those *initial* customers at least." Transcript P41 LL13-19 (*emphasis added*). This sort of approach illustrates the importance of adopting regulations that clarify the extent of the Commission's jurisdictional authority.

Based on information provided in this docket, it is doubtful that the pipeline NRC describes would actually be an *intrastate* pipeline. The blanket certificate NRC describes seeking (Transcript P30 L19 – P32 L12) can be granted only to an *interstate* pipeline.[15] NRC will not be able to obtain the FERC authority it describes in order to serve ethanol plants or other high volume ratepayers unless NRC is in fact an interstate pipeline.

NRC has threatened that if the Commission attempts to apply the double-piping statute to construction of the pipeline, it will go to the FERC for authorization to construct the pipeline.[16] In any event, NRC states it will go to the FERC for authorization to serve high volume ratepayers, evidently in an effort to escape the applicability of the double-piping statute. *See, e.g.*, Transcript P31 LL10-19. It appears that even the staff of the FERC is somewhat confused about NRC's unique approach to regulation. Transcript P31 L20 - P32 L12.[17]

[15] 18 CFR §157.204(a) reads, "Any interstate pipeline which has been issued a certificate other than a limited-jurisdiction certificate, pursuant to section 7 of the Natural Gas Act and had rates accepted by the Commission may apply for a blanket certificate under this subpart in the manner prescribed in §§157.6(a), 157.14(a) and 385.2011 of this chapter."

[16] See letter submitted by NRC in this docket dated July 16, 2007.

[17] NRC's representative described FERC Staff as "surprised."

Even though the state certificate statute itself is very simple and does not in any way clarify its requirements, NRC claims that no additional regulations are necessary before NRC can apply for and the Commission can issue it a certificate. NRC apparently believes that, without regulations, the Commission will impose only those requirements NRC is readily able to meet, and the Commission will comply with any timeline NRC proposes. NRC's representative was fairly direct about this when he stated at the hearing, "Regulations adopted won't be used by this pipeline because the opportunity and the window will have passed. We don't have the time to go through a full rulemaking process and the likely judicial review of that process before we could submit an application." Transcript P54 LL10-15.

The presentation made by NRC to prospective customers clearly describes its "bob and weave" jurisdictional approach.[18] Note the process described by NRC and how, as early as last spring, NRC believed it could control that process and give direction *to* this Commission rather than being directed *by* this Commission:

> Nebraska Resources Project
> Regulatory Process
>
> - The regulatory approval process will be a two phase process involving both the FERC and the Nebraska PSC.
> - At the Initial phase, NRC will seek regulatory approval from the Nebraska PSC to construct a pipeline to serve the LDC load in Nebraska.
> - The Nebraska PSC will have jurisdiction over the LDC load.
>   - ***However, NRC will still be able to construct the pipeline to a capacity that will serve both the LDC load and the Non-LDC load.***
>   - ***This process is expedited when compared to a full FERC 7(c) construction certificate filing. 6-9 months vs. 18-22 months.***

[18] See Attachment 2 to Comments of SourceGas Distribution LLC filed in this docket September 7, 2007.

- After Construction, NRC may seek limited FERC Regulatory approval for the Non-LDC load on the pipe.
    - This procedure is also expedited because the certificate provided will only be one for operation of the pipeline and not for construction.
    - Once approved by FERC, FERC will have jurisdiction over the Non-LDC load.

NRC Presentation, page 6 (*emphasis added*). After obtaining authority to construct a pipeline, NRC will then go to the FERC to obtain authority to serve its prospective customers. After the Nebraska Commission has granted a certificate and authorized the construction of the initial phase of the pipeline, there is no reason why NRC will ever return.[19] As NRC essentially described its plan, it will go to the FERC for all subsequent regulation, merely *claiming* to be regulated by Nebraska. The project NRC describes is an interstate pipeline. Such a scheme does not satisfy the requirements of the Hinshaw exemption, will not provide customer protection, and could well have a negative impact on the natural gas industry.

II. Comprehensive regulations should be issued prior to proceeding to process an application under Neb. Rev. Stat. Sec. 66-1853.

This docket deals with complex issues related to the relationship between federal and state jurisdiction, regulation of intrastate pipelines and the interpretation of Nebraska's statutes. NRC suggests that the Commission should move forward with the process of granting NRC a certificate to operate as a jurisdictional utility without first issuing regulations governing how the Commission will do that. Transcript PP 52-55.

NRC asks the Commission to regulate without oversight, rules, or established procedures. NRC's entreaty to the Commission is in part an effort to prevent the

[19] An NRC representative stated, ""And that properly a facility such as this, which is going to be wholly located within your borders, ought to be regulated *at least initially* by this commission." Transcript P26 LL19-22 (*emphasis added*).

Commission from applying the state's policy against double piping. NRC in effect is asking the Commission to "regulate as you go," providing a blank check to NRC that does not contain necessary safeguards for other stakeholders.

Northern understands that local and state officials support the project described by NRC and that extensive lobbying has occurred under the premise that the local economic benefits are substantial enough that the Commission should engage in an expedited review. Various commenters and parties have even asked the Commission to forego its legal obligation to promulgate appropriate regulations. This suggested "regulate as you go" process may serve the political expediency of this project, but would be a disservice to other stakeholders such as landowners, future ratepayers on other projects, and any other similarly-situated project that may be brought before this Commission.

Based on comments at the hearing, it appears one or more Commissioners may be convinced there is a need to move very quickly and, therefore, believe that issuing regulations in advance may not be necessary. NRC has attempted to convey to the Commission not only the need to move quickly, but that the contemplated project presents no safety issues or other complex issues that require the Commission to be fully informed of the facts. However, the Commission is being asked to deal with an area in which it has no experience and in which it could benefit from the input that a rulemaking would provide. Further, without regulations, it is not clear that the Commission would be exercising the complete regulation over an intrastate pipeline that is necessary to foreclose federal jurisdiction pursuant to the Hinshaw exemption.

NRC readily admits that the standard of public convenience set forth in the Nebraska statutes is a "broad public interest standard." *See, e.g.*, Transcript P44 LL15-

19. However, NRC suggests various interpretations of that standard. At one point, a representative stated, "And what we're contemplating is a process whereby the approvals and licenses and permits of those agencies can be pulled together in one place, and your certificate can be conditioned on NRC satisfying the requirements of those line agencies." Transcript P45 LL14-20. Various pre-existing environmental requirements are cited. In other words, NRC suggests that the only role of the Commission is to determine that other agencies have met their statutory obligations. At another point, the representative admitted, "There's more than just environmental issues involved here. Is this pipeline appropriately sized? Is it routed properly?" He also mentions that financial capability and pipeline operating experience may be relevant factors. Transcript P53 L7-P54 L1. At one point, he mentions, "Nebraska Resources pipeline will be subject to all applicable state and federal environmental, safety, and operational regulations and will, in fact, address all landowner and stakeholder rights." Transcript P68 LL13-17.

As NRC's testimony reflects, the meaning of "public convenience" as set forth in the Nebraska statutes is not necessarily obvious. The definition is something that must be clarified in advance as part of a rulemaking, not something that is defined while processing an application, or even later, after construction has commenced or been completed. The definition most surely encompasses an obligation on the part of the Commission to ensure that the public interest is served, not simply an obligation to oversee the work done by other state agencies.

Commissioner Boyle asked a question (Transcript P49 L1) about whether a consultant paid by NRC could be properly viewed as objective. In responding, the NRC representative stated, "We can work with the commission staff to fine tune that to suit

your needs." Transcript P51 LL24-25. Although the procedure suggested by NRC appears to be the procedure followed by the FERC for environmental review, the FERC process also has a detailed policy and comprehensive regulations for all elements of a project. See 18 CFR Part 157 and NRC Hearing Exhibit. The Commission should ensure that the procedure for hiring any necessary consultants is not determined behind closed doors in order to ensure that the process has an appropriate level of objectivity.[20]

Exercising jurisdiction over an intrastate pipeline in a manner that meets the requirements of the Hinshaw exemption requires a state to regulate the rates, service and facilities of the pipeline. NRC has attempted to dismiss safety as a minor concern. At the September 25th hearing, a representative for NRC stated, "It's not flowing through neighborhoods where somebody happens to be out gardening with a roto-tiller and strikes a small line going to the neighbor's house. You know, this is a main line facility that doesn't present those kinds of concerns."[21] Northern agrees that an estimated 180-mile high pressure transmission line built through agricultural land presents a variety of concerns that differ from those presented by a distribution line constructed in populated areas. For example, farming activities present a much greater risk to a large, high pressure transmission pipeline than gardening does to a small, low pressure distribution system. The route of the contemplated pipeline is primarily farmland.[22] Of the pipeline safety incidents on Northern's system, the vast majority are related to improper digging by third parties without a call to One-Call.[23] Exhibit 10 submitted by Northern at the

[20] At the federal level, generally, the pipeline operator submits a list of three or more potential third-party environmental companies that will review the project. The FERC chooses among those alternatives, with all costs borne by the operator.
[21] Transcript at P26 LL19-24.
[22] Transcript P48 LL12-13.
[23] This fact also is relevant to the double-piping issue.

September 25th hearing shows how landowner and environmental issues can cause problems during pipeline construction, even when that construction is conducted pursuant to detailed rules. In addition, Northern's experience shows that agricultural landowners where the pipe will be located must be notified and brought meaningfully into the project evaluation. Approving a project without providing such landowners a full and fair opportunity to voice their concerns will cause the landowners to blame this Commission if they are dissatisfied with the project and its effect on their property. See Attachment A to this brief for examples of the types of concerns typically expressed by landowners. Rules must be adopted that set forth a specific process that allows for these concerns to be expressed and decided upon. The federal process includes an opportunity (generally a 30-day period) for affected landowners to provide comment on the route and impact of a prospective pipeline. Without properly promulgated regulations, or at least a procedural order mandating such a comment period, Nebraska landowners will not have that protection.

One issue that needs to be included in regulations and in the evaluation of whether a particular pipeline meets the public convenience is Nebraska's public policy against double piping. The state has a clearly enunciated policy against wasteful, redundant pipe, which causes increased cost, raises unnecessary environmental issues, and causes increased risk to the safety of the public. The state's policy is articulated forcefully in several statutes as an outright prohibition. For example, a policy against redundant utility facilities is expressed not only in Neb. Rev. Stat. §66-1852, but in Neb. Rev. Stat. §§66-

1858 - 66-1864 and in Sec. 70-1001. Whether a utility is otherwise under the Commission's jurisdiction is not relevant to the applicability of the state's policy.[24]

Northern believes that all of these issues are relevant to a determination of public convenience under Neb. Stat. § 66-1853. In order to fully exercise its authority, the Commission must initiate a rulemaking to clarify how these various standards will apply and to clarify the application process, so any stakeholder can understand the requirements.

There is only one reason for the Commission not to issue regulations prior to processing any application for a certificate of convenience—a need to move quickly in order to meet certain claimed deadlines related to ethanol plant development in the state. An NRC representative explained that timing related to ethanol load was the only real reason that NRC intended to seek a certificate from the Nebraska Commission. Transcript P26 L23 – P28 L10. According to NRC, service to those customers will not be regulated by this Commission; therefore, the need to move quickly on their behalf should not enter into the decision-making process. If speed were that important, NRC should have made a certificate filing with the FERC last spring.

CONCLUSION

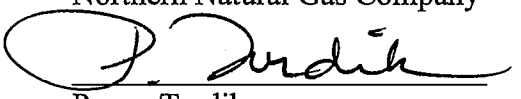
In conclusion, should this Commission decide that it is appropriate to regulate intrastate pipelines, the Commission must conduct such regulation responsibly, by establishing a comprehensive set of regulations that protect the state and all stakeholders. Those regulations must incorporate the state's clearly enunciated policy against redundant natural gas infrastructure, including facilities that are redundant with those of

[24] Note that metropolitan utilities districts, municipalities, public power districts, irrigation districts and electric cooperatives are all included along with investor-owned utilities in various statutes. *See also*, In re Appl. of Metropolitan Util. Dist. of Omaha v. Neb. Pub. Serv. Comm., 704 N.W.2d 237 (Neb. 2005).

an interstate pipeline and should clarify the state's regulation of rates, service and facilities in order to ensure the applicability of the Hinshaw exemption. In addition, those regulations should echo the statutory dictate that only high volume ratepayers are entitled to negotiated rate contracts.

Respectfully submitted,

Northern Natural Gas Company



Penny Tvrdik
Senior Counsel
J. Gregory Porter
Vice President & General Counsel
Northern Natural Gas Company
1111 South 103rd Street
Omaha, NE 68124
Phone: 402-398-7097
Fax: 402-398-7426
penny.tvrdik@nngco.com

October 12, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of October 2007, the Post-Hearing Brief of Northern Natural Gas Company was served upon the following by regular U.S. Mail, postage prepaid, properly addressed as follows:

Laura Demman
Director and Legal Counsel
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
PH: 402-471-0255
FX: 402-471-0251
E-mail: laura.demman@psc.ne.gov

Angela DuVall Melton
Legal Counsel
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68508
PH: 402-471-0274
FX: 402-471-0251
E-mail: angela.melton@psc.ne.gov

Loel P. Brooks
Brooks, Pansing Brooks, P.C., L.L.O.
1248 O Street, Suite 984
Lincoln, NE 68508
PH: 402-476-3300
E-mail: lbrooks@brookspanlaw.com

Troy Kirk
Mark A. Fahleson
Rembolt Ludtke LLP
1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
PH: (402) 475-5100
FX: (402) 475-5087
tkirk@remboltludtke.com
mfahleson@remboltludtke.com

William F. Demarest, Jr.
Blackwell Sanders LLP
750 17th Street, NW, Suite 1000
Washington, DC 20006
PH: 202-378-2300
wdemarest@blackwellsanders.com

Roger P. Cox, Public Advocate
Harding & Shultz, P.C., L.L.O.
800 Lincoln Square
121 South 13 Street
P.O. Box 82028
Lincoln, NE 68501-2028
PH: 402-434-3000

Stephen M. Bruckner
Fraser Stryker P.C., L.L.O.
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102-2663
PH: 402-342-6000

Bud Becker
Vice President, Regulatory Law
SOURCEGAS DISTRIBUTION LLC
370 Van Gordon Street, Suite 4000
Lakewood, CO 80228
PH: 303-763-3496

John M. Lingelbach
Heather S. Voegele
Koley Jessen P.C., L.L.O.
One Pacific Place, Suite 800
1125 South 103rd Street
Omaha, NE 68124-1079
PH: 402-390-9500
FX: 402-390-9005
John.Lingelbach@koleyjessen.com
Heather.Voegele@koleyjessen.com

Richard Haubensak
% Cornerstone Energy, Inc.
11011 Q Street, Suite 106A
Omaha, NE 68137
dhaubensak@cornerenergy.com

T.J. Carroll
Vice President & Deputy General Counsel
Kinder Morgan Interstate Gas Transmission, LLC
370 Van Gordon Street
Lakewood, CO 80228

Penny Tvrdik
Senior Counsel

CP07-44-000

Attachment A
Item 1

GENE TAYLOR
4TH DISTRICT, MISSISSIPPI

COMMITTEE ON ARMED SERVICES

CHAIRMAN
SUBCOMMITTEE ON SEAPOWER AND EXPEDITIONARY FORCES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

http://www.house.gov/genetaylor

Congress of the United States

House of Representatives

Washington, DC 20515–2404

2269 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–2404
(202) 225–5772
FAX: (202) 225–7074

DISTRICT OFFICES:

2424 14TH STREET
GULFPORT, MS 39501
(228) 864–7670

701 MAIN STREET
SUITE 215
HATTIESBURG, MS 39401
(601) 582–3246

2900 GOVERNMENT STREET, SUITE B
OCEAN SPRINGS, MS 39564
(228) 872–7950

527 CENTRAL AVENUE
LAUREL, MS 39440
(601) 425–3905

June 25, 2007

Federal Energy Regulatory Commission
ATTN: Congressional Liaison
888 First Street, NE
Washington, DC 20426

RE: Frances Beasley
c/o Barbara Newell
23 Keystone Drive
Petal, MS 39465

Dear Sir/Madam:

Through this means, I am respectfully requesting your assistance. Enclosed find information from one of our constituents who has grave concerns for her mother's well-being. I hope you will take a close look at this and come to a satisfactory resolution for everyone. Your attention to this matter at your earliest possible convenience will be greatly appreciated.

If you have any questions, please contact my District Representative, Mrs. Jerry Martin, in the Hattiesburg Office located at 701 Main Street – Suite 215, Hattiesburg, MS 39401. Otherwise, I will await a reply regarding this matter.

Sincerely yours,

GENE TAYLOR
Member of Congress

GT:jm

Enclosure

20070154

June 7, 2007

Dear Mrs. J,Martin,

Enclosed you will find all the letters and communication that my sister and mother have written thus far to FERC, SESH, and to Senators Lott and Cockran and Congressman B. Thompson and the speeches that she and I gave at the Environment Impact Study Meetings held in Hattiesburg and Gallman MS.

My sister, Carolyn Beasley Hudson has highlighted the most important issues in the letter to Senator Lott and Cochran and Congressman Thompson. There are also pictures of the pipeline explosion in Carlsbad, New Mexico in her speech that she showed at the Gallman meeting May 24, 2007.

My mother, sister, and I are hoping that with Congressman Taylor and your help, that maybe we can at least get the pipeline moved away from her house. We know that it will not be moved off her place completely but a safer distance would be helpful..

Sincerely,

Barbara B Newell

Barbara B. Newell

23 Keystone Drive
Petal, Mississippi 39465
May 29, 2007

Honorable Gene Taylor
United States House of Representative
2269 Rayburn House Office Building
Washington D.C. 20515-2404

RE: SESH Pipeline-FERC Docket No. PF06-28-000

Dear Congressman Taylor:

As a citizen of Forrest County I am very concerned with the proposed pipeline that is being proposed by Southeast Supply Header (SESH). I feel that the people in this county have not been given information in proper form and on how this pipeline could have an impact on their environment and their lives.

My mother resides in Copiah County and this pipeline has been routed onto her property. In August of 2006, my mother, Frances Beasley, addressed questions regarding her safety and potential property damage to FERC. In response, Mr. Art Cook and Mr. Ron Miller from SESH were sent to meet with my mother, Frances Beasley, sister, Carolyn Beasley Hudson and myself.

During this meeting we were told the pipe line was approximately 425 feet from my mother's home. The proposed site also went through three old home sites with well that are potential home sites for my sister and me to build our retirement homes on. During this meeting my sister presented information on how a 30" pipeline in Carlsbad, New Mexico, with 675 psi had exploded resulting in the death of 12 people. Mr. Cook and Mr. Miller acted as though they had never heard about this explosion or the resulting deaths and damage caused.

With safety as our main concern, we asked many questions which all could not be answered by these gentlemen. They referred us to the websites of CenterPoint Energy.com and Duke Energy.com, now Spectra Energy.com for information.

During our meeting we asked that the pipeline be moved away from the home of my mother and more in the southern and western portion of her property. We at no time have said that the pipeline could not be placed on her property. This portion of my mother's property is shaped in a rectangle with the pipeline going diagonally through the center of the rectangle. Currently a county road divides her property. Now with the proposed pipeline route, it will be divided into four parts.

We expressed our concerns not only for safety, but the fact of the destruction of our pine tree plantation, going through hardwoods that are well over 100 years old,

and crossing the spillway below the pond dam. We were told that this route was the "most economical" route for SESH.

We questioned Mr. Cook and Mr. Miller if we refused to allow the pipeline to be placed, at that time only 425 feet from my mother's home, what would be the next step. We were told that the portion of land needed for the pipeline could be condemned, and then could be taken by eminent domain. After this meeting, my sister wrote a letter for FERC for the record voicing concerns on behalf of my mother.

In March 2007, my mother and I met with SESH representatives Mark Hall and Mike Fannan, Right of Way Representative. At this time my mother and I were informed that the pipeline had been moved several hundred feet, but an exact measurement could not be given. I find that on May 22, 2007, when I was speaking with a SESH representative, that this SESH representative asked Mr. Marty Bass the distance, and he knew exactly how far it was from Frances Beasley's house.

At this meeting, we again stated the proposed route even though moved a few hundred feet was still very unacceptable. We offered an alternative route which I personally walked these gentlemen over a part of. The pipeline route we suggested did run parallel to our property on clear cut land, then it crosses the creek and would proceed onto our land. This would place the pipeline away from my mother's home and would only affect one potential home site. However, is still will divide our land into four parts. They agreed to take this information back to the engineers.

We again requested information on safety and information on potential impact radius study. Mr. Fannan assured me he would get me the information. I received on April 18, 2007, a notebook weighting five plus pounds entitled SESH Supplemental Information FERC Docket Nos. CP07-44-000. The potential impact study information was not there. The original FERC Docket No. PR06-28-000.

On April 22, 2007, my sister wrote a letter Mr. Fannan requesting impact study information as requested during our September 5, 2006 meeting. A copy of this letter was sent also to FERC for the record. Mr. Fannan did not respond to the letter.

On May 21, 2007, a public meeting was held in Lucedale, MS regarding the Draft Environmental Impact Statement. At this time I spoke about problems that we had encountered with SESH and I began to call names of SESH that we had encounter. SESH representatives were present in the meeting.

On May 22, 2007, my sister had a phone call with Mr. Fannan and he stated that the radius impact information requested was being sent to her and myself. This information was received on May 23, 2007, at my home.

On May 22, 2007, another public meeting was held in Hattiesburg, MS regarding the Draft Environmental Impact Study. At this meeting I spoke with the SESH

representative. That is when he called Mr. Bass and Mr. Bass knew the exact placement of the pipeline.

Using the formula provided by SESH, and data from the Carlsbad, New Mexico, explosion, there is over a 20% discrepancy on what SESH considered to be a safe area. Yet, these 12 people were incinerated at a distance of 675 feet from a pipeline that was only 30 inches and carries gas at 675 psi. Yet, Mr. Fannan told my sister that if this proposed 42" pipeline with 1200 psi should explode, all my mother would receive would be some dust and dirt.

Enclosed you will find a copy of the speech that I made in Hattiesburg. This will provide you additional information and also will be part of the Draft Environmental Impact Study Record.

Congressman Taylor, I am asking for your help and support in asking the following questions:

1. Why Does SESH have a disregard to human life and property by using calculations that underestimate the impact on the environment if an eruption should occur.

2. Why has SESH filled a request to the United States Deparment of Transportation to "use an alternate design factor for the pipeline in low population areas" building the pipeline using a thinner wall thickness? Does human life in a low population mean less than that in a higher populated arear?

3. Why SESH representatives threaten the use of eminent domain when the FERC as not approved this project at this time?

SESH has placed so much misery and stress on my mother, sister, and myself that is totally uncalled for. It is only for their profit and gain. They have not been truthful in their presentation of this project to my mother and feel other fellow Mississippians' may have doubts also based on comments made to me after speaking in Lucedale and Hattiesburg last week.

I appreciate your time in this matter.

Sincerely,

Barbara Beasley Newell

Barbara Beasley Newell

Attachment A
Item 2

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas Branch 2
Southeast Supply Header Project
Docket No. CP07-44-000 and
CP07-45-000

July 26, 2007
Brian D. O'Neill, Attorney
Southeast Supply Header, LLC
LeBoeuf, Lamb, Greene & MacRae, LLP
1875 Connecticut Ave., NW, Suite 1200
Washington, DC 2009-5728

Re: Request for Information Regarding Landowner Complaints

Dear Mr. O'Neill:

We continue to receive complaints from landowners about right of entry negotiations conducted by your right-of-way agents and land surveyors related to the proposed Southeast Supply Header Project (SESH). Some of these concerns are raised in letters in the record, others were made as comments at our Draft Environmental Impact Statement comment meetings. We are currently investigating a complaint from Mr. Dawson Wilkerson that his property was accessed by survey crews without authorization. Mr. Wilkerson's complaint was forwarded to us by Senator Thad Cochran on June 27, 2007. We have also received a number of complaints from landowners about what they view as coercive tactics by SESH right-of-way agents. The landowners are telling us that they are told that the alignment of the project is a "done deal", has final approval, and that they have to acquiesce to easement agreements or face condemnation proceedings.

So that there is no misunderstanding, I want to remind you that the right of eminent domain under Federal law does not attach until the Commission issues a certificate. Pending a Commission decision on your application, SESH must obtain specific approval from affected landowners to gain access to their property.

We are asking that SESH review its company policies and procedures to assure that similar problems are avoided in the future and that members of the public are treated with courtesy in these sorts of circumstances. Please also provide a report of right of entry negotiations to date, the names of those involved

and their employers, and surveys conducted for Mr. Wilkerson's property earlier this year.

Please file a complete response within 10 days of the date of this letter. Send your response to:

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, DC 20426

Thank you for your cooperation. If you have any questions, please call Van Button, Environmental Project Manager, at 202-502-8613.

Sincerely,

Richard R. Hoffmann, Director
Division of Gas-Environment and
Engineering

cc: Public File, Service List Docket No. CP07-44-000 and CP07-45-000

Julie Allison
Regulatory Affairs
Spectra Energy
5400 Westheimer Court
Houston, Texas 77056

Patrick B. Pope
Vice President & General Counsel
Southern Natural Gas Company
1900 5th Ave. North
Birmingham, AL 35202-2563

Mark C. Schroeder
Vice President & General Counsel
CenterPoint Energy Gas Transmission
5400 Westheimer Court
Houston, TX 77002

Attachment A
Item 3

ORIGINAL

Kimberly Bose, Secretary Federal Energy Regulatory Commission

888 First Street, N.E., Room 1A Washington, DC 20426

August 13, 2007 Re: Docket CP07-208-000 Rockies Express East

Dear Ms. Bose:

Again I feel the urgent need to express our concerns and utter disgust about the Rex East Pipeline project. We for one, along with our son and close neighbors have never been contacted by the REX people about this project which crosses our land. I myself called recently and finally talked with one of their people to make them aware that we are all in the proposed path of this. They proceeded to tell me that anyone within 1500 ft. should have been contacted from the start. The front door of our home is 300 ft from where the pipeline will be placed, or supposedly to be put. They were very apologetic and sent us all of the materials to read about it, but, this was a bit late to try and mend the fix don't you think!!!

We have been living on this ground for 32 years and paying our property taxes, wouldn't you think they could have found us at the court house!!!

Several landowners in this area have refused to let anyone on their property for any kind of studies, including us, and are planning on using eminent domain as the last option.

We feel that we are being railroaded by a company that is only concerned with the huge profit they will make and doesn't care about the devastation it will bring when tearing up the farmland and wonderful natural area that we have here. This ground has been in our family for 4 generations and is very productive and has several of our family members living on it at the present time, and we plan on staying here!!

Why can't they use the interstate corridor like the present Vectren Company is using for the Honda plant project?

They are burying their pipeline 5 ft. in the ground for a much smaller pipeline, that's another major issue, since we are so concerned about the explosion risks.

We know there are no easy solutions, but it seems that some major regards for us as landowners should be taken into account. With all of the issues that are coming to light with the REX people and their problems, how about listening to us, the people who have a higher stake in all of this. We will be the ones having to live with the consequences right in our own back yards!!!

Kevin and Debbie Williams

3636 E. 500 S.

Waldron, IN 46182

765-525-6689

Attachment A
Item 4

ORIGINAL

August 18, 2007

Secretary's Office
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

Re: Necessity to Utilize Eminent Domain to Acquire Easement Across My Property

CP07-208-000

To Whom It May Concern:

My name is Neva Campbell and I am a property owner who is anticipated to be impacted by the Rockies Express East (REX) Pipeline Project. I've been contacted by land agents for REX wishing to obtain an easement across my property for the proposed project.

Mr. Jack Donaho who is a team leader for FERC's Office of Energy Projects on July 26, 2007 forwarded correspondence to Robert F. Harrington Vice President of Regulatory Affairs for Rockies Express Pipeline, LLC. In the correspondence Mr. Donaho requested that REX officials discuss the extent to which the use of Eminent Domain Authority will be necessary.

I would like to take this opportunity to say at a very minimum REX will have to utilize Eminent Domain Authority against me to acquire an easement across my property. Furthermore, unless REX provides me with a copy of the appraisal performed on my property and that of my five (5) closest neighbors and thirty (30) days to consider their first offer; I intend to litigate this matter to the fullest extent possible.

It has been my experience so far in dealing with REX and that of other property owners I know that property owners have not been provided as much information and respect as we deserve. Given the actions and inactions of REX officials and to a lesser extent FERC, I believe that any offer for compensation for an easement will be insufficient to even scratch the surface of the damage being done to my property.

Therefore, in closing I would urge that FERC do not allow the pipeline to be constructed along the proposed alignment. However, if FERC ultimately provides approval for the project and Eminent Domain Authority is granted to REX, any easement across my property must be acquired through the exercise of the power of eminent domain.

Sincerely

Neva Campbell

Neva Campbell

Attachment A
Item 5

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern LNG, Inc.	Docket No. CP06-470-000
Elba Express Company, L.L.C.	Docket Nos. CP06-471-000 CP06-472-000 CP06-473-000
Southern Natural Gas Company	Docket No. CP06-474-000

MOTION FOR HEARING

COME NOW, Latha Anderson; Francis D. Barnett; Joseph W. Bennett, Jr.; Lincoln H. Bounds; Mark and Dena Daniel; Adelle G. Dehil; Dennis G. Dehil; Bob and Belle Guin; Kay Johnston; Marion and Dorothy McHugh; Douglas M. Nelson; Carol Phillips; William W. Robinson; R. Almond Standard; Richard and Virginia Thomas; Melody M. Thornton; and Marcus O. Tucker ("Intervenors"), pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. §§ 385.212 and 385.214, and Section 15(a) of the Natural Gas Act (15 U.S.C. § 717n), and file this their Motion for Hearing to present evidence to prove that Federal Energy Regulatory Commission ("FERC") is required to deny authority for the construction of the proposed Northern Segment Greenfield Route of the Elba Express Pipeline. Intervenors seek relief pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, the Natural Gas Act, 15 U.S.C. § 717 *et seq.*, and the Administrative Procedures Act, 5 U.S.C. § 511 *et seq.*

STATEMENT OF THE PROCEEDINGS

On September 29, 2006, the Elba Express Company, LLC ("EEC"), Southern Natural Gas Company ("SNG"), and Southern LNG, Inc. ("Southern LNG") filed their applications for the expansion of the natural gas terminal facility on Elba Island, Georgia. In conjunction with the terminal expansion, EEC filed an application for construction of a new natural gas transmission pipeline from Elba Island to Anderson County, South Carolina. The first 105 miles of new pipeline construction would be collocated within an existing natural gas pipeline right of way. This portion of the pipeline is known as the "Southern Segment."

The next 83 miles of new pipeline construction are proposed to be built in undisturbed agricultural and forest lands. This proposed portion of the pipeline is known as the "Greenfield Condemnation Corridor." The named Intervenors herein are landowners who own properties in the proposed right-of-way ("ROW") of the Greenfield Condemnation Corridor, and will have their properties taken from them through eminent domain, if the Greenfield Condemnation Corridor is approved for construction.

On March 30, 2007, FERC released the Draft Environmental Impact Statement, Elba III Project ("DEIS"), regarding the proposed terminal expansion and new pipeline construction. Intervenors herein submitted their comments and objections to the presumptions, analyses, and incorrect and unsupported conclusions contained in the DEIS on May 25, 2007. Intervenors' submissions on March 25, 2007, as supplemented, are incorporated herein by reference.

EEC's chosen Greenfield Condemnation Corridor, as described in the DEIS, will result in the taking and destruction of over 1,000 acres of pristine land in one of the most unspoiled and historically significant areas of the State of Georgia. This corridor is described in the DEIS as the "83.1 mile- Elba Express Pipeline- Northern Segment" which would "... involve Greenfield construction."

The Greenfield Condemnation Corridor of the Elba Express Pipeline will consist of the construction of 83 miles of 42- to 36-inch diameter natural gas pipeline through existing homesteads, historically significant properties, forests, pastures, wetlands, and waterways from Wrens, Georgia to Hart County, Georgia and Anderson County, South Carolina. The project will require clear-cutting forested lands and disturbing soils along the proposed route in a construction ROW 110- to 125-feet wide. The finished pipeline will require a permanent 50-foot wide ROW.

There is an existing ROW that can and should be used to construct the Northern Segment of the Pipeline, with a *de minimus* net impact to the environment, which has not been properly considered as an alternative. All of the alternative routes, as described in the DEIS and introduced in response to specific comments to the DEIS, have been deliberately manipulated to make the Greenfield Condemnation Corridor appear less damaging to the environment in comparison to these manipulated and intellectually dishonest proposed alternatives. FERC and EEC have misrepresented the requirements of the project and have manipulated all described alternate routes, in an effort to justify destruction of the environment and the exercise of the power of eminent domain solely for

the economic gain of EEC and its customers. FERC and EEC have acted egregiously in an arbitrary and capricious manner by ignoring the existing physical infrastructure and imposing imaginary project requirements for the sole purpose of benefitting private natural gas companies at the expense of Georgia Citizens and to the detriment of irreplaceable natural resources of the State of Georgia.

In response to Intervenors' Comments to the DEIS, EEC fabricated an additional route, Alternative C. Alternative C was likewise manipulated with false assumptions to skew the environmental comparison in favor of its desired route.

The proposed Greenfield Condemnation Corridor was chosen for the sole purpose of allowing the pipeline company to tie into the Transco Pipeline on both the East and West sides of the Savannah River. The Savannah River is the arbitrary boundary between Transco Zones 4 and 5, for the purposes of tariff calculations. There are no physical differences in capacity of the Transco Pipeline on either side of the river. On June 6, 2007, FERC issued comments to the DEIS ordering EEC to describe tariff differences between connecting to Transco Zone 4 and connecting directly to Transco Zone 5. On June 11, 2007, EEC responded, clearly admitting that by tapping directly into Transco Zone 5, which can only be accomplished by fording the Savannah River, EEC can provide over $54,000,000.00 of annual savings to its two customers, Shell and BG Group.

> ... without direct Zone 5 access, the combined transportation costs to access the Zone 5 market will increase by more than

40%, and such an increase can result in up to approximately $54 million per year of additional transportation costs.

See Response of EEC to Data Request dated June 6, 2007. This is a stunning admission that the only reason for putting the pipeline swath through the Greenfield Condemnation Corridor is to assure natural gas companies additional huge profits, while Georgia's natural resources are decimated.

On June 15, 2007, EEC filed a supplement to its June 11 response, showing that the windfall for its customers would be $54,282,997.00 per year at full capacity.

This economic benefit to two foreign corporations is the only justification offered for the destruction and condemnation of the Greenfield Condemnation Corridor. There is absolutely no benefit to the public, particularly the devastated landowners in the pathway of the pipeline proposed by EEC. There is no authority in law or ethics to factor in the private gain of project proponents in the balancing of benefits required under NEPA analysis.

In furtherance of its improper goals, EEC has egregiously manipulated and misrepresented the available capacity of the Transco Pipeline. On June 22, 2007, EEC stated that all of the capacity between Jonesboro and the proposed tie-ins in Hart and Anderson Counties has been allocated to other customers. "There is no unsubscribed firm capacity on Transco's pipeline system in this area ..." *See* Response to Environmental Data Request dated June 23, 2007.

However, there is no indication anywhere in the record of how this segment of the Transco Pipeline is any different from EEC's desired tie-in locations, nor is there any evidence that enough gas is removed from the Transco Pipeline before EEC's desired tie-ins at Anderson, S.C. to make room for the 1 billion cubic feet per day (bcfd) that the EEC Pipeline will add to the Transco system. Simply put, if EEC's statements about allocated capacity are true, then 1 bcfd of natural gas simply disappears between Jonesboro and Hart County, Georgia. Evidence is required in a hearing to support these assertions.

The power of eminent domain cannot be justified to destroy the resources of the State of Georgia and take the private property of landowners solely for economic benefit through additional profits for a multi-billion-dollar natural gas pipeline company and its foreign customers.

PURPOSES OF NEPA AND STANDARD OF REVIEW

Section 102(2) of the National Environmental Policy Act, 42 U.S.C. § 4332(2) requires all agencies of the federal government proposing "major Federal actions" to prepare "a detailed statement by the responsible official" concerning, *inter alia*, the environmental impact of the proposed action and any alternatives to the action, including the environmental consequences of the alternatives. *National Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 833-34, 148 U.S.App.D.C. 5, 11-12 (1972).

The purposes behind this requirement are:

> The 'detailed statement' required by § 4332(2)(C) serves at least three purposes. First, it permits the court to ascertain whether the agency has made a good faith effort to take into account the

values NEPA seeks to safeguard. To that end it must 'explicate fully its course of inquiry, its analysis and its reasoning. *Ely v. Velde*, 451 F.2d 1130, 1139 (4th Cir. 1971); *Appalachian Power Co. v. E.P.A.*, 477 F.2d 495, 507 (4th Cir. 1973)). *See also Natural Resources Defense Council v. E. P. A.*, 478 F.2d 873 (875) (1st Cir. 1973); *Environmental Defense Fund, Inc. v. Ruckelshaus*, 142 U.S.App.D.C. 74, 439 F.2d 584 (1971). Second, it serves as an environmental full disclosure law, providing information which Congress thought the public should have concerning the particular environmental costs involved in a project. To that end, it 'must be written in language that is understandable to nontechnical minds and yet contain enough scientific reasoning to alert specialists to particular problems within the field of their expertise.' *Environmental Defense Fund, Inc. v. Corps of Engineers of U.S. Army*, 348 F.Supp. 916, 933 (W.D. Miss.1972). It cannot be composed of statements 'too vague, too general and too conclusory.' *Environmental Defense Fund, Inc. v. Froehlke*, 473 F.2d 346, 348 (8th Cir. 1972). Finally, and perhaps most substantively, the requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug. A conclusory statement 'unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind' not only fails to crystallize issues, *Natural Resources Defense Council, Inc. v. Grant*, 355 F.Supp. 280, 287 (E.D. N.C.1973), but 'affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.' *Monroe County Conservation Council, Inc. v. Volpe*, 472 F.2d 693, 697 (2d Cir. 1972). Moreover, where comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. There must be good faith, reasoned analysis in response.

Silva v. Lynn, 482 F.2d 1282, 1284-85 (1973).

Agency actions must be reversed as arbitrary and capricious when the agency fails to "examine the relevant data and

> articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1983) (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168, 83 S. Ct. 239, 9 L.Ed.2d 207 (1962)).

DISCUSSION

The expressly stated Project Purpose and Need, and the proposed pipeline construction actions, described in the DEIS to accomplish these goals are inconsistent. As stated in the DEIS:

> The primary purpose of the Elba III Project is to provide an incremental source of, and the transportation infrastructure required to deliver, firm, long-term, and competitively priced natural gas to the Georgia and South Carolina interstate natural gas markets, and other markets in the southeastern and eastern United States (U.S.).

See DEIS, pp. 1-4.

We now know that EEC and FERC define the term "competitively priced natural gas" to mean $54,282,997.00 per year in savings for two foreign corporations. There is no justification in the DEIS Project Purpose and Need for FERC's and EEC's acceptance of the spurious assertions that the proposed pipeline must interconnect with the existing Transco Pipeline on both sides of the Savannah River to "provide an incremental source of, and the transportation infrastructure required to deliver, firm, long-term, and competitively priced natural gas to the Georgia and South Carolina interstate natural gas markets, and other

markets in the southeastern and eastern United States." For the project to correspond to the actual purpose and need, the DEIS should truthfully state: "The primary purpose of this project and the selection of this environmentally destructive route is to provide $54,282,997.00 of tariff savings per year for two foreign corporations." The most basic review of EEC's and FERC's sole reason for choice of the Greenfield Condemnation Corridor, increased profit for natural gas companies, is in direct contravention of the purposes of NEPA. The actions of FERC in its endorsement and choice of the Greenfield Condemnation Corridor in the DEIS are per se arbitrary and capricious.

The existing Transco Pipeline serves a market from Texas to New England, with customers in Georgia and South Carolina. The Transco Pipeline has sufficient capacity to serve the markets described in the goals of the proposed Elba project by utilizing a **single** interconnection with a new, larger pipeline from Elba Island. There is physically no difference in capacity in the existing Transco Pipeline on either side of the Savannah River, and therefore, absolutely no justification for the Greenfield Condemnation Corridor. Approval for the construction of the Greenfield Condemnation Corridor must be denied.

FERC clearly will have taken no "hard look" at the destruction of the environment, if it accepts EEC's admitted and unrefuted profit motives as sole justification for the rape of Mother Earth. FERC has acted arbitrarily and capriciously by ignoring the existing physical infrastructure for construction of additional pipeline capacity, when capacity of the Transco Pipeline is the same on both sides of the Savannah River. There is no legal or environmental justification for connections to the Transco Pipeline on both sides

of the Savannah River. The Transco Pipeline requires no alterations whatsoever to transport the increased natural gas volume of the Elba Island Terminal Expansion Project.

The DEIS Project Purpose and Need states that the Elba III Project would fulfill its stated purpose and need by providing:

> ... firm interstate natural gas pipeline capacity that can move gas from the Elba Island Terminal to major pipeline interconnects with 1) the existing Southern Pipeline System in its Zone 3 near the end of its South Main Line, 2) the existing Transco Pipeline System at the end of its Zone 4, and 3) the existing Transco Pipeline System at the beginning of its Zone 5.

See DEIS, pp. 1-4.

The Greenfield Condemnation Corridor, which proposes a new pipeline to the border of Georgia and under the Savannah River to South Carolina requires tunneling beneath one of the largest rivers in the Eastern United States, purely so that EEC can tap directly into Transco Zone 5 and save its customers $54 million. Zone 5 exists as a legal fiction in Transco's tariff structure, which is solely an issue for negotiation between EEC and Transco. The lack of necessity for this route proves that the use of eminent domain to take the property of hundreds of landowners and destroy thousands of acres of pristine countryside, is completely arbitrary and capricious. The route has been endorsed by FERC solely to assure additional private economic benefit where there are already record profits for the natural gas companies, and will not benefit the public, including citizens of the State of Georgia, in any way. Rather, the only effect upon Georgia is to unnecessarily destroy

Georgia's natural resources. Having two pipelines under and through the Savannah River is an unnecessary duplication of facilities and is incurably arbitrary and capricious.

A. Alternative Routes Identified But Not Analyzed.

The alternatives mentioned, but not analyzed by EEC and FERC, have been grossly manipulated to justify FERC's flawed presumptions. The DEIS identifies two alternate routes for the Northern Segment, as discussed in Section 3.3.2.2. of the DEIS, that use existing ROW for the Northern Segment in order to reach the Transco Pipeline. In response to Intervenors' Comments to the DEIS, EEC proposed a third route, Alternative C. As is readily apparent from the most cursory review, Alternative C was likewise manipulated by EEC to argue that the Greenfield Condemnation Corridor is the only feasible route.

1. Major Route Alternative A.

In Section 3.3.2.2 of the DEIS, there are two identified, but ultimately discarded, alternatives for the Northern Segment of the Elba Express route, which use existing pipeline ROWs. Major Route Alternative A, as described, is comprised of two distinct "legs": one Eastern Leg to the Transco Pipeline in South Carolina, and one Western Leg to the Transco Pipeline in Georgia near Jonesboro.

The Alternative A Western Leg is comprised of two independent segments: (1) the east-west segment between Wrens and Thomaston; and (2) the north-south segment between Thomaston and Jonesboro, where the pipeline would interconnect with Transco. The DEIS states that the east-west segment from Wrens to Thomaston has sufficient excess capacity such that no new pipeline would be required along this approximately 80-mile

segment. The north-south segment from Thomaston to Jonesboro measures 60 miles and would require construction of a new 36-inch pipeline. This segment would require a temporary construction ROW of only 70 feet and 20-30 feet of additional permanent ROW adjacent to the existing pipeline ROW.

The Eastern Leg of Alternative A, as described in Section 3.3.2.2, is not physically required to transport the increased supply of natural gas to the ultimate users. *See* DEIS p. 3-19. This segment has been concocted by EEC, and ratified by FERC, based upon the profit motive, which requires connection of the EEC pipeline with the Transco pipeline on both sides of the Savannah River. The Zone 5 contingency, which is based solely upon profit, intentionally skews the comparison of the adverse impacts between using the existing ROW of the Western Leg Segment and the Greenfield Condemnation Corridor of the Northern Segment.

The Western Leg of Alternative A alone has sufficient capacity to achieve project goals. More importantly, the overall impacts to the environment will be significantly less than the destruction of the Greenfield Condemnation Corridor, because of decreased impacted area, use of existing pipelines, and utilization of previously disturbed lands. Most astonishingly, as the DEIS states, the existing pipeline between the existing Wrens Compressor Station and the junction in Thomaston is already sufficient to handle the increased capacity. No new pipeline construction would be required along this portion of the route, at all.

> Along the western leg, Southern's existing pipeline system between Wrens and Thomaston has a west-to-east design capacity of a little less than 1 Bcfd; therefore, little or no new pipeline would be needed ....
>
> Between the Transco Interconnection and Transco Zone 4, little or no new pipeline construction would be required because this portion of Transco's system has available capacity.

See DEIS, p. 3-19.

Only 60 miles of new pipeline with 70 feet of temporary construction ROW in an existing ROW would be required to create the additional needed capacity. The Greenfield Condemnation Corridor, by comparison, would require 81 miles of construction in ROW of 110- to 120-feet in width, through existing homesteads and pristine forest lands. It is obviously easier, less expensive, and more environmentally sound to provide the increased volume of natural gas to its ultimate destination using the Western Leg Segment to satisfy the project goals.

Inclusion of the Eastern Leg in Alternative A creates a false impression of an economic advantage for the selection of the Greenfield Condemnation Corridor. The careful analysis herein proves that the only reason for the Greenfield Condemnation Corridor is to provide $54,282,997.00 per year of savings to two foreign corporations.

The DEIS states at page 3-19:

> As seen in table 3.3-1, the length of pipeline (and therefore the environmental impacts) required by Alternative A is significantly greater than that associated with the proposed route ... Additionally, the cost to construct Alternative A is greater than 3 times that of the proposed action between Wrens and Transco's Zones 4 and 5.

These statements are only true, because of the inclusion of the Eastern Leg Segment of Alternative A, which is not required to handle the additional supply.

Additionally, the following statement from the DEIS indicates FERC's bias toward the pipeline companies' private economic gains:

> Alternative A would also conflict with the project's objectives because it would incur additional incremental transportation charges associated with the use of Southern's pipeline system between Wrens and Thomaston.[1]

See DEIS, p. 3-19.

This statement indicates a clear bias toward the natural gas companies, at the expense of the property rights and interests of the landowners impacted by the proposed route. The DEIS does not include an evaluation of the balancing of interests between the economic benefit to the pipeline companies and the affected landowners.

> The balancing of interests and benefits that will precede the environmental analysis will largely focus on economic interests such as the property rights of land owners ... If the environmental analysis following a preliminary determination indicates a preferred route other than the one proposed by the applicant, the earlier balancing of the public benefits of the project against its adverse effects would be reopened to take into account the adverse effects on land owners who would be affected by the changed route.

See FERC Commission Opinions, Orders and Notices, Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy, 88 FERC p. 61227 (1999).

---

[1] It is important to note that Southern LNG, SNG, and EEC are owned by the same company, El Paso Corp.

A quick comparison of the individual leg portions of Alternative A and the Greenfield Condemnation Corridor shows that there is a clear advantage to using the existing ROW and pipeline of the Western Leg to provide the increased natural gas output from the Elba Island Terminal. FERC's discussion of the savings to EEC's customers by use of the Zone 5 contingency of shunting the pipeline into both Georgia and South Carolina is the sole reasoning for FERC's attempted justification to counter the clearly obvious and superior existing route. Private profit motives of a project proponent cannot outweigh the costs to the environment and the taking of private citizens' property. *See* 18 C.F.R. § 380.15.

2. Major Route Alternative B.

FERC's Major Route Alternative B is merely the Eastern Leg of Alternative A, with no physical differences, and is identified as an independent means of accomplishing the goals of the Project. However, the Western Leg of Alternative A is not evaluated as an independent alternative. This obvious and stunning gamesmanship is shocking, because it cannot be refuted that the Western Leg of Alternative A, alone, is completely capable of satisfying the goals of the Project, without destroying irreplaceable pristine, human, plant, and wildlife habitats in Georgia. Alternative B is also fundamentally flawed in its presumptions, and has been manipulated to skew the adverse impacts of the route comparisons in favor of the Greenfield Condemnation Corridor.

As with Alternative A, Alternative B has been presented by FERC as impacting a greater number of acres than the proposed action, because the length of the new pipeline construction required for this Alternative is more than twice the length when

compared to the Greenfield Condemnation Corridor. And again, because Alternative B would use a portion of Transco's system to transport natural gas between Spartanburg and Zone 4, EEC claims it would incur "additional incremental transportation charges". *See* DEIS p. 3-20.

Also, Alternative B, includes a "dotted line" indicating that this route would include a segment underneath the Savannah River to Transco Zone 4. Careful analysis reveals that EEC proposes no new construction between Spartanburg and Anderson or Hart Counties. Therefore, EEC has intentionally misrepresented this segment of the Alternative B and its stated goals, by not including a connection to Zone 4 at all.

There is no explanation of why any "incremental transportation charges" should factor into FERC's environmental analysis of the Project, but that becomes the exclusive rallying reason for FERC's determinations. FERC is clearly favoring private economic interests that have no beneficial impact on the public. By admitting and openly ratifying its bias toward the EEC's chosen route, to the total detriment of the Citizens of Georgia, FERC is clearly basing its decision process on arbitrary and capricious factors. FERC, by its approval of the DEIS, has admitted, when faced with the need of greater profits of the natural gas companies, that it does not care about the property rights of the Citizens of the State of Georgia or the delicate ecosystems that will be irreversibly destroyed. Rather, FERC has decided to bend completely to the whims of major corporate conglomerates that want to reroute natural gas pipelines solely to financially benefit these companies by millions of dollars each year.

B. Major Route Alternative C

FERC intentionally ignored the Western Leg as an independent route, by arbitrarily identifying the Eastern Leg in Alternative A as a stand-alone route alternative. This glaring oversight was pointed out in Intervenors' Comments to the DEIS. In response to Intervenors' Comments, on June 8, 2007, EEC submitted an Alternative C.

Alternative C consists of the Western Leg segment of Alternative A, but also includes new pipeline construction from the interconnection to the Transco Pipeline in Jonesboro, all the way to Anderson, South Carolina to reach Transco Zone 5. Again, the only justification for this unnecessary construction is $54,282,997.00 per year of savings to two foreign corporations.

In an attempt to otherwise justify this unnecessary construction parallel to the Transco Pipeline, EEC asserts that Transco has already committed the pipeline capacity in this segment to other customers. EEC has egregiously manipulated and misrepresented the available capacity of the Transco Pipeline and has ignored the fact that it proposes to interconnect into the Transco Pipeline at a point where it claims that the Transco Pipeline has no available capacity. On June 22, 2007, EEC stated that all of the capacity between Jonesboro and the proposed tie-ins in Hart and Anderson Counties has been allocated to other customers. "There is no unsubscribed firm capacity on Transco's pipeline system in this area ..." *See* Response to Environmental Data Request dated June 23, 2007. However, the proposed Greenfield Condemnation Corridor would interconnect directly into this purportedly full segment. EEC cannot explain why the interconnection in Hart County is

acceptable and why the interconnection in Jonesboro is not, and why 1 bcfd of capacity magically disappears, only to reappear in the Transco Pipeline at a later point.

EEC has advanced a "backhaul" theory to justify the interconnection point of Alternative B in Spartanburg, South Carolina, without the need for new construction along Transco's existing pipeline. The interconnection at Spartanburg is, of course, located in Zone 5, the new tariff zone from whence comes the additional $54 million in profits. However, there is no indication anywhere in the record of how this segment of the Transco Pipeline is any different from EEC's desired tie-in locations. Nor is there any evidence that, assuming the Transco capacity is fully subscribed as asserted by EEC, enough gas is removed from the Transco Pipeline before EEC's desired tie-ins to accept the 1 bcfd that the EEC Pipeline will add to the Transco system. Simply put, if EEC's statements about allocated capacity are true, then 1 bcfd of natural gas simply disappears between the East and West sides of the Savannah River.

The $54,282,997.00 per year economic benefit to two foreign corporations is the only true reason for the destruction and condemnation of the Greenfield Condemnation Corridor. There is absolutely no benefit to the public, particularly to the devastated landowners in the pathway of EEC or to the natural resources of Georgia which will be forever destroyed by this proposed and unnecessary pipeline corridor. There is no authority in law or ethics to factor in, or even consider the private gain of project proponents in the balancing of benefits required under NEPA analysis.

If the proposed Greenfield Condemnation Corridor is approved, then the purposes of NEPA will have been thwarted, the requirements of NEPA will have no meaning, and FERC's own regulations will have been ignored. An agency ignoring its own policies in an action is per se engaging in arbitrary and capricious conduct. *See* *Acosta-Montero v. I.N.S.*, 62 F.3d 1347 (11th Cir.1995).

C. The No Action Alternative Not Adequately Analyzed.

Section 3.1 of the DEIS contains no analysis of the No Action Alternative, and merely concludes that the objectives of the Project would not be met under the No Action Alternative.

> If action on the project is postponed, it could have the same result as the No Action Alternative, i.e., the objective of providing direct access to imported LNG supplies for the southeastern and eastern U.S. market would be jeopardized and could result in these supplies going to other destinations around the world.
>
> As a result, natural gas customers may have fewer and potentially more expensive options for obtaining natural gas supplies in the near future.

See DEIS, p. 3-2.

There are no citations to any authority or factual support provided for these purely speculative assertions. FERC's statements show that it is basing its decision, absent any factual analysis, upon a fear of punishment if it does not bow to the will of EEC and its customers. FERC does so by implying that postponing or preventing the Project will result in natural gas suppliers cutting off supplies to the East coast. Furthermore, the DEIS states:

> Ultimately, it is purely speculative to predict the resulting actions that would be taken by the end users if the natural gas supplied by the Project were not available or the associated direct and indirect environmental impacts of these actions.

See DEIS, p. 3-2.

It is unquestioned that FERC has not taken a "hard look" into the No Action Alternative, and is basing the above-stated assumptions on nothing at all but fear from veiled threats to cut off supply. FERC has acted arbitrarily and capriciously by not evaluating any data, studies, or reports in the No Action Alternative and by simply stating that FERC is afraid of a cut off of supply if it does not follow the dictates of EEC and its customers.

E. EEC Has Not Requested a Change in the Transco Tariff.

As has been made abundantly clear, the only reason for the destruction of the Greenfield Condemnation Corridor is to tap into Transco Zone 5 to achieve the benefit of connection directly to a separate tariff zone. Intervenors are incredulous as to why Zone 5, or the corresponding tariff, cannot be changed through negotiations with appropriate parties. The necessary paper amendment would save 83.1 miles of pristine environment, would result in fewer construction costs for EEC, and would completely meet the $54,282,997.00 per year savings to EEC's customers. In any event, these possible lost profits are an arbitrary and capricious basis for FERC's approval of the DEIS

CONCLUSION

For all of the reasons stated herein, and as more completely set forth in the previously submitted Comments to DEIS, as supplemented, Intervenors request a hearing

to present evidence and oral arguments that the applications for construction of the proposed Greenfield Condemnation Corridor should be DENIED.

Respectfully submitted July 27, 2007.

/s/ F. Edwin Hallman, Jr.
F. EDWIN HALLMAN, JR.
State Bar of Georgia #319800

/s/ Richard A. Wingate
RICHARD A. WINGATE
State Bar of Georgia #770617

For DECKER, HALLMAN, BARBER & BRIGGS
Attorneys for Intervenors

260 Peachtree Street, N.W.
Suite 1700
Atlanta, Georgia 30303
(404) 522-1500

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Richard A. Wingate
RICHARD A. WINGATE
State Bar of Georgia #770617

For DECKER, HALLMAN, BARBER & BRIGGS
Attorneys for Intervenors

260 Peachtree Street, N.W.
Suite 1700
Atlanta, Georgia 30303
(404) 522-1500